DOCUMENT RESUME

ED 141 838 CS 501 728

AUTHOR Harader, William H.
TITLE Interface of FOI and Privacy Acts.
INSTITUTION Freedom of Information Center, Columbia, Mo.
REPORT NO FOI-371
PUB DATE May 77
NOTE 9p.

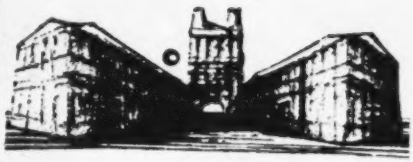
EDRS PRICE MF-$0.83 HC-$1.67 Plus Postage.
DESCRIPTORS *Bibliographies; *Civil Liberties; Civil Rights Legislation; *Confidentiality; Confidential Records; Conflict Resolution; *Federal Legislation; *Information Needs
IDENTIFIERS *Freedom of Information; *Privacy Act 1974

ABSTRACT

Three federal laws have recently been enacted in response to conflicts about the individual's right to privacy, the government's need for personal information, and the public's right to know what government is doing. Both the Freedom of Information Act (FOIA) and the Government in the Sunshine Law are intended to make information about government activities more available to the public, while the Privacy Act is intended to add special protections for certain personal records. Problems, termed "interface" problems, frequently arise when an attempt is made to determine how the acts relate to each other. This paper traces the development of the three laws, explains the interface problem, and discusses ways in which government managers who are faced with requests for release of information can handle problems in interpreting the laws and in persuading the custodian of the information to release it. The paper concludes with a selected bibliography of publications dealing with the issues discussed. (GW)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED141838



SCHOOL OF JOURNALISM, UNIVERSITY OF MISSOURI AT COLUMBIA
May, 1977

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

FREEDOM OF INFORMATION CENTER REPORT NO. 371

INTERFACE OF FOI AND PRIVACY ACTS

This report was written by William H. Harader, associate professor of political science at Indiana State University and occasional consultant to various federal agencies on the Privacy and FOI Acts. The bibliography was prepared by Jerome Hanus, Analyst, American National Government, Government Division, The Library of Congress.

The Public's Right to Know

Freedom of information is a rapidly growing approach to governments' relationships with their public. With minor variations, it is appearing at the federal level and in many of the states. The basic concept is simply that the public has a "right to know" all about what its government is doing. But that right, like other rights, is not absolute. And therein lies the basic problem in implementation: determining just where the line is drawn. Whenever discretionary limits are used in lieu of absolutes, reasonable persons will disagree on the application of such limits because of their own perspectives.

Put yourself in the place of a government manager, responsible for voluminous files containing records on government activities. The majority of these records document citizens' interactions with *your* agency, which is part of *their* federal government. As a government employee, you have invested a lot of yourself in this agency, and you identify strongly with it. You take your responsibility for the agency's records very seriously. Indeed, because you have helped create the records and have worked with them so long, your interest has become personal and possessive.

At the same time, you are a concerned private citizen. All your American values have been reinforced by the bicentennial. Renewed interest in the revolutionary founding and the Declaration of Independence has made you more aware than ever of America's emphasis on the individual. You believe we must carefully guard the rights of each individual citizen.

You also have participated with great interest in the recent national election. As a government employee, the candidates' positions were of significant concern. The election heightened your awareness of the press and its contribution to the political process: the public's "right to know" what public servants and candidates say and do makes the elections much more meaningful. Sometimes, you resent the press for protecting its sources, because the information it reports is therefore much more difficult to evaluate, but you appreciate the difficult balance reporters must try to achieve in this knotty area. It is similar, you think, to your own problem in balancing the public's right to information with your responsibility to protect citizens' privacy.

Clearly, the individual's right to privacy, the government's need for personal information, and the public's right to know what government is doing are all important values. Their conflict is inevitable. In fact, the conflict is likely to become more intense in the future as environmental forces cause government to assume a larger role in society. This larger role will create a need for gathering more personal information and, at the same time, the public's need to oversee activities will assume an even greater importance.

Three laws recently have been enacted at the federal level in response to these needs. Both the Freedom of Information Act (FOIA) and the Government in the Sunshine Law are intended to make information about government activities more available to the general public. The Privacy Act is intended to add special protections for certain personal records. (The Privacy Act also makes information more available to the record subject, but that aspect of the act is not relevant to this paper.) Because the records covered by the Privacy Act are also subject to the Freedom of Information Act, problems frequently arise in which the government manager must ask, "How do these two acts relate to each other and to the problem at hand?" Such problems are usually termed "interface" problems. Fortunately, the two laws have been written and interpreted in such a way that the area of true conflict between them is actually very small. The government manager's dilemma, therefore, is a value conflict. This paper will demonstrate this point by first, tracing the development of both acts; second, explaining the actual interface; and third, discussing the operation of the Freedom of Information Act. The Government in the Sunshine Law is still in its infancy and interpretation is being de-

Summary:

The author discusses disclosure of information under the Freedom of Information Act, particularly as it is affected by the Privacy Act. He includes a selected bibliography for further examination of the issues presented.

Additional copies: 25c each.

CS 501 728

veloped. Its impact on the value conflict cannot be easily assessed at this time, though implementation of Government in the Sunshine seems to raise essentially the same privacy questions as Freedom of Information. It therefore will receive only cursory notice.

Concern with the availability of government information can be traced back to the Administrative Procedures Act of 1946. Section 3 of that act provides that, unless otherwise required by statute, "matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found." The section was clearly intended to make information available to the public. Unfortunately, in operation many "good causes" were found, and the intent of the act was thwarted by most agencies.

Consequently, in the mid-50's Congress again turned its attention to the problem. The result was a 1958 amendment to the 1789 "housekeeping" law, which had given federal executive branch agencies authority to create and maintain records and files. The new language (5 U.S.C. 301) stated: "This section does not authorize withholding information from the public or limiting the availability of records to the public." Yet, as recently as 1972, some agencies still relied on the 1789 "housekeeping" statute to withhold certain types of information from the public.[1] Again, the agencies' instincts to make as little information as possible available to the public seem quite clear.

Provisions of the FOIA

The congressional response was equally clear: the Freedom of Information Act was passed in 1966. An amendment to section 3 of the Administrative Procedures Act, it established the principle that government records are public records unless they fall into at least one of nine distinct categories of "exempt" materials, in which case information may be withheld. It is clearly intended that agencies exercise discretion in the use of exemptions, to protect the interests inherent in each category and to release information which, although technically covered, either would not cause the type of harm contemplated or would serve a large public good at a small cost to the protected interest. The 1966 FOIA is the first to expressly create a protection for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" [5 U.S.C. 552 (b) (6)].

Still, the executive branch was reluctant at best. Aware that cooperation might be lacking, Congress monitored the act from its infancy and identified footdragging, excessively high fees, and simple noncooperation.[2] The result of congressional dissatisfaction was a package of amendments passed over a presidential veto late in 1974. The amendments require indices of certain information, set time limits for responses, provide for publication of fee schedules and require agencies to segregate and release nonexempt materials which might be filed with exempt materials. In addition, exemptions 1 (classified materials) and 7 (law enforcement information) were rewritten to be more precise. The protection for personal privacy (exemption 6) was not altered. In light of the Senate's overriding the presidential veto of the FOIA amendments and passing the Privacy Act the same day (November 21, 1974), the fact that this sixth exemption was in no way changed takes on significance in fully understanding the congressional intent.

Passage of the Privacy Act

The next step in the history is the passage of the Privacy Act. This law grants individuals access to their own records and provides a mechanism for correcting those records. It requires government agencies to maintain correct records, to inform record subjects about their authority for collecting information and its uses, and to protect those records from unauthorized access. The act has rather definite limits, two of which are significant for this paper. First, it applies only to records in "systems of records." These are agency records on citizens or lawful resident aliens that are retrieved by the subject's name or identifier. Second, it does not restrict release when disclosure of the record would be "required under section 552 of this title." In other words, disclosures required by the Freedom of Information Act are not intended to be affected by the Privacy Act. The Privacy Act was a congressional response to the public's fear of governmental overcollection and misuse of personal data. It is not intended to restrict legitimate public or individual access in any way.

Government in the Sunshine

The historical trend is toward more openness. The changes initiated by the 94th Congress in opening the majority of its meetings and the 1976 passage of the Government in the Sunshine Law to open specified agency meetings indicate a continued movement toward open government at the federal level. Even though the open meetings will still, for the most part, be located in Washington, the act's requirement that minutes and transcripts of closed meetings be available, except as exempt under the FOIA, should result in a useful information source.

The Interface

The interface problem is two-fold. First, what rights of access does the file subject have? Can the subject use the Privacy Act, the Freedom of Information Act or both? While some initial rulings suggested that the Privacy Act displaced the FOIA and thus became the only avenue for subject access, more recent interpretations accept the use of either or both acts. The second problem is the more important for purposes of this paper. What effect does the Privacy Act have on the availability of information to third parties?

Suppose a reporter has routinely requested information from a federal agency under the FOIA. If that information is personal information about someone other than himself, is it now unavailable? Will the agency now say, "Because of the Privacy Act, you can no longer receive this data"? If it does, the agency is in error.

The Privacy Act is quite clear on this point. It simply does not affect the release of information that *must be released* under the FOIA. In other words, information not exempt under the FOIA on September 26, 1975, is still not exempt. The Privacy Act does not create any new FOIA exemptions. Thus, if the agency wishes to deny access to personal information, it can do so only if release would constitute a clearly unwarranted invasion of

personal privacy (exemption 6) or if the information falls within another of the FOIA exemptions.

The only instance where the Privacy Act might restrict third-party access would be when the information sought is covered by an FOIA exemption, the record is located in a system of records, and the agency would otherwise exercise its discretion and release the exempt information. Since the Freedom of Information Act would not require the release, the Privacy Act could prevent it.

Problems of Interpretation and Persuasion

> . . . the individual's right to be let alone versus the public's right to know is often a hard issue to resolve. But certainly the individual who has not sought public attention should not be thrust into the public spotlight without clear cause.[3]

The real problems for a government manager charged with handling requests for release of information are in the areas of interpretation and persuasion. First, he must determine what constitutes an invasion of privacy and, then, what is clearly unwarranted. If releasing any information about a person invades that person's privacy, and it seems to, this problem actually becomes one of deciding what is or is not clearly unwarranted. The decision is even more difficult for managers who perceive themselves as threatened by the Privacy Act's criminal sanctions. Many prefer erring on the "safe" side, to avoid possible fines, and may be denying information requests which might otherwise have been granted. The specter of sanctions may affect both "leaks" and official releases of covered materials.

The U.S. Civil Service Commission offers some assistance in determining what information may be released. In its personnel rules, part 294.702, the commission states that for many purposes, "The name, present and past position titles, grades, salaries, and duty stations . . . of a specifically identified government employee or former government employee is information available to the public. . . ." Thus, the rules for some people are set forth. The position of the Civil Service Commission is a traditional recognition that citizens who in a democracy are the bosses have a right to know how much their employees are earning. Presumably, this allows them to decide whether they are getting their full value.

Unfortunately, there is very little to guide the manager in deciding other cases. In essence, it appears that he is told to balance. The Supreme Court stated in *Department of the Air Force et al. v. Michael T. Rose et al.* [96 S. Ct. 1592 (1976)]:

> Congress sought to construct an exemption that would require a balancing of the individual's right to privacy against the basic purpose of the Freedom of Information Act "to open agency action to the light of public scrutiny."

Chief Justice Burger's dissent in the *Rose* case suggests that the balance must be struck between the degree of harm implicit in the release and the need of the requester. The latter view has characterized lower court decisions: *Getman v. National Labor Relations Board* [450 F. 2d 670 (D.C. Cir. 1971)] and *Wine Hobby, U.S.A., Inc. v. United States Bureau of Alcohol, Tobacco, and Firearms* [363 F. Supp. 231 (E.D. Pa. 1973)]. These two cases, considered together, suggest that commercial uses will warrant less invasion of privacy than university research or perhaps newspaper reporting, which are construed to be public uses. Paul S. Wallace concludes:

> The legislative history appears to support use of the balancing test in the treatment of Exemption (6) issues. Consequently, the agencies and the reviewing courts have the responsibility to determine the point where the public's need for information no longer outweighs the individual's invasion of privacy. In applying the balancing test in *Getman*, the court considered such factors as the extent of the invasion of privacy, the public interest that would be served by disclosure, and whether the interest could be satisfied without the requested material in its efforts to accommodate both the right to privacy and the right to information. The *Rose* case restricted the discretionary balancing approach in *Getman* by concentrating on the element of privacy in its determination of whether the invasion of privacy was "clearly unwarranted." Since a majority of cases indicate that the courts are sensitive to the concept of personal privacy, it would appear that if a request involves this exemption, a brief explanation of why the information is needed would be helpful so that it can be determined whether the invasion of privacy resulting from disclosure would be "unwarranted."[4]

The dilemma, of course, lies in striking the balance. One rule of thumb might be, "If it is about the agency, release it. If about an individual, guard it."

But the world is not that simple. There are times, as the Civil Service Commission recognizes, when an individual's relationship to the public makes some of his activities public. For example, if an individual believed to have broken a law is arrested, that contact with government is public information, as is the trial record which may show his innocence. One might argue that a reputation can be hurt by such publicity, but in this instance the values outweigh possible harm. Were arrests to go unreported and such information protected, the potential for secret political arrests and trials would exist. The danger of secrecy far outweighs the potential harm of disclosure. When an individual's activities cease to be private and the public becomes an actor, the activities become a public concern. Clearly, that was the case with Congressman Wayne Hays. Rep. Hays' private affair became public largely because public money was involved.

A crucial problem for a government manager is to recognize activities which make personal information public. A related problem is to recognize those activities where the action itself is public, but the person need not be. The Freedom of Information Act now requires segregation of exempt and nonexempt material. Often, personal privacy can be protected by removing names and releasing the requested information. This adds a new dimension to the balance, for nameless information is sometimes useless and information sometimes leads to names. Nonetheless, this option provides a broader opportunity to serve the public's "right to know."

Other FOIA exemptions provide similarly difficult problems in interpretation. None, however, appears to be

quite so troublesome in application as the privacy exemption. It is therefore the best example of the problem.

Persuasion is the second problem area of the government manager. Federal agencies have many managers. In most cases, some have been designated to work with Freedom of Information requests, while others have custody of the files. Those who keep files often assume a protective role. In many cases, the files have become personalized in such a way that the custodian may resist anyone seeking access. The custodian of the files may even resent his supervisor's reviewing the contents. Such a person is likely to be uncooperative in making information available to the public. In many instances, the person who holds the information will outrank by several levels the official carrying an FOIA request. In essence, the superior official tells a subordinate official to find a reason for denying access.

In most agencies, however, that instruction does not end the process because an FOIA denial must be approved at a higher level. But the request may be filled only after friction between colleagues. At best, some time will be lost. At worst, a lengthy battle will ensue where personalities eventually become the issue. In most issues, some legitimate areas of denial are found and some information is, therefore, legitimately withheld.

Careful review also takes time. The manager, who must balance values and persuade colleagues, must review the files carefully. This will cause delay. Delay is but another part of the manager's problem. The act imposes time limits, recognizing that useful information is time sensitive. Even so, the manager must protect both personal relationships and the government's legitimate interests, one of which is the privacy of its citizens. The dilemma becomes even more difficult in those many instances where the manager recognizes the legitimate interest and need of a requester.

Whether one appreciates the manager's problems or not, disagreements between government managers and requesters are inevitable. Understanding the other's position at least ought to prevent such disagreements from becoming abrasive. An appreciation for the manager's dilemma, on the other hand, may enable a requester to interact with a government manager in such a way that both their needs are accommodated. While disagreements will not always be resolved through interaction, both parties stand to benefit if such resolution can be achieved.

Indeed, the proper approach can be very effective. The person making a request can get a faster response by following a few simple rules. First, know the law and the regulations issued by the agency from which information is sought. Requests will be handled more quickly if they are correctly identified and sent to the proper office. Otherwise, time is lost in recognizing and routing them. Be specific, ask for finite records. Too often, time is lost dealing with records that really are not wanted. Be willing to work with government officials, informally whenever possible, to define requests and to compromise problems. Often, materials can be made available without using formal procedures.

When disagreements cannot be compromised satisfactorily, one should not simply accept defeat. At the federal level, FOIA requesters have channels for administrative appeal available, and ultimately the courts can be utilized. Both procedures are time consuming but should nonetheless be used, in order to establish precedents for future reference. Such precedents will ease the government manager's dilemma.

Conclusion

Simply stated, the only reason information in an agency's possession can be denied upon a proper FOIA request is that the information falls within an FOIA exemption. The Privacy Act is not even helpful in determining what might be "a clearly unwarranted invasion of personal privacy." The overlap between the two acts is slight indeed.

FOOTNOTES

1. *Freedom of Information Act and Amendments of 1974 (P.L. 93-502): Source Book: Legislative History, Texts and Other Documents:* Subcommittee on Government Information and Individual Rights of the Committee on Government Operations, U.S. House of Representatives, and Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S. Senate; Joint Committee Print, 94th Congress, 1st Session, March, 1975, p. 9.
2. These factors and the changes are discussed by Wallis McClain, "Implementing the Amended FOI Act," Freedom of Information Center Report No. 343, Sept., 1975.
3. Charles B. Seib, "Personal Privacy: Does the Press Go Too Far," Washington Post, March 19, 1976, p. A 27.
4. Paul S. Wallace, "Analysis of Selected Cases Decided Under the Sixth Exemption of the Freedom of Information Act Apropos the Right of Privacy of Affected Individuals Against the Right of the Public to Be Informed," *Legislative History of the Privacy Act of 1974 (Public Law 93-579): Source Book on Privacy*, Committee on Government Operations, United States Senate, and the Subcommittee on Government Information and Individual Rights of the Committee on Government Operations, U.S. House of Representatives, Joint Committee Print, 94th Congress, 2nd Session, Sept., 1976, p. 1375.

SELECTED BIBLIOGRAPHY*

I. Conceptual Development of Privacy

Bloustein, Edward J. Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser. New York University Law Review, v. 39, Dec. 1964: 962-1007.

Breckenridge, Adam C. The right to privacy. Lincoln, University of Nebraska Press, 1970. 155 p.

Columbia human rights law review. Winter 1973: entire volume. Articles include: Arthur R. Miller, "Computers, Data Banks and Individual Privacy: An Overview," Sam J. Ervin, Jr., "The First Amendment: A Living Thought in the Computer Age," Nicholas deB. Katzenbach and Richard W. Tome, "Crime Data Centers: The Use of Computers in Crime Detection and Prevention," Frank Askin, "Surveillance: The Social Science Perspective," Michael A. Baker, "Record Privacy as a Marginal Problem: The Limits of Consciousness and Concern," John P. Flannery, "Commercial Information Brokers."

Davis, Frederick. What Do We Mean by "Right to Privacy"? South Dakota Law Review, v. 4, Spring 1959: 1-24.

Fried, Charles. "Privacy." The Yale law journal, 77 January, 1968: 475-93.

*Reprinted as received from the Library of Congress.

Greenawalt, Kent. Legal protections of privacy. Washington, Office of Telecommunications Policy [1975] 130 p.

————. Privacy and its legal protections. Hastings Center studies, v. 2, Sept. 1974: 45-68.

Henkin, Louis. Privacy and Autonomy. Columbia Law Review, v. 74, Dec. 1974: 1410-1433.

Law and contemporary problems, v. 31, Spring 1966: entire volume. Articles include: William M. Beaney, "The Right to Privacy and American Law;" Milton R. Konvitz, "Privacy and the Law: A Philosophical Prelude;" Edward Shils, "Privacy: Its Constitution and Vicissitudes;" Sidney M. Jourard, "Some Psychological Aspects of Privacy;" Harry Kalven, Jr., "Privacy in Tort Law—Were Warren and Brandeis Wrong?"; Kenneth L. Karst, "The Files: Legal Controls Over the Accuracy and Accessibility of Stored Personal Data," Joel F. Handler and Margaret K. Rosenheim, "Privacy in Welfare: Public Assistance and Juvenile Justice," and William A. Creech, "The Privacy of Government Employees."

Lusky, Louis. Invasion of Privacy: A clarification of concepts. Political science quarterly, v. 77: 2 June 1972: 192-209.

Miller, Arthur R. The assault on privacy: computers, data banks, and dossiers. Ann Arbor, The University of Michigan Press, 1971. One of the best sources on privacy and the computer.

Parker, Richard B. A Definition of Privacy. Rutgers Law Review, v. 27, 1974: 275-296.

Pennock, J. Roland and John W. Chapman, ed. Privacy. Nomos XIII: Yearbook of the American Society for Political and Legal Philosophy. New York, Atherton Press, 1971. 255 p.

Rule, James B. Private Lives and Public Surveillance: Social Control in the Computer Age. New York, Schocken Books, Inc., 1974. 382 p.

Thomson, Judith Jarvis. The right to privacy. Philosophy and public affairs, v. 4, summer 1975: 295-314.

Warren, Samuel D., and Louis D. Brandeis. The right to privacy. Harvard law review, v. 4, December 1890: 193-220.

Westin, Alan F. Privacy and Freedom. New York, Atheneum Press, 1967. 487 p.

II. Privacy Act of 1974

Association of the Bar of the City of New York. Committee on Federal Legislation. Government data banks and privacy of individuals (H.R. 16373 and S. 3418). Record of the Association of the Bar of the City of New York, v. 30, Jan.-Feb. 1975: 55-106.

Bigelow, Robert P. The Privacy Act of 1974. Practical Lawyer, v. 6, Sept. 1975: 15-24.

Cohen, Richard E. Agencies prepare regulations for implementing new privacy law. National journal reports, v. 7, May 24, 1975: 774-777.

Goldstein, Robert C. The costs of privacy. Datamation, v. 21, Oct. 1975: 65-69.

Government information and the rights of citizens. Michigan law review, v. 73, May-June 1975: whole issue.

Hanus, Jerome J. A Right of Information Privacy. Journal of Policy Studies, v. 4, winter 1975: 136-141.

U.S. Congress. House. Committee on Government Operations. Subcommittee on Foreign Operations and Government Information. Access to records. Hearings, 93d Congress, 2d session on H.R. 12206 and related bills. Washington, U.S. Govt. Print. Off., 1974. 338 p.

U.S. Congress. Senate. Committee on Government Operations and Committee on the Judiciary. Ad Hoc Subcommittee on Privacy and Information Systems and the Subcommittee on Constitutional Rights. Privacy: the collection, use, and computerization of personal data. Joint hearings, 93d Congress, 2d session, on S. 3418, S. 3633, S. 3116, S. 2810, and S. 2542. 2 v. June 18, 19, and 20, 1974. Washington, U.S. Govt. Print. Off., 1974. 2335 p.

U.S. National Bureau of Standards. Computer security guidelines for implementing the Privacy Act of 1974. [Washington, For sale by the Supt. of Docs., U.S. Govt. Print. Off.] 1975. 20 p. (Federal information processing standards publication. FIPS pub. 41).

U.S. Office of Federal Register. Protecting Your Right to Privacy. Washington, U.S. Govt. Print. Off., 1976.

U.S. Office of Management and Budget. Privacy Act implementation; guidelines and responsibilities. Federal register, v. 40, July 9, 1975: 28947-28978.

III. Computers and Privacy

Canada. Department of Communications and Department of Justice. Privacy and Computers. Ottawa, Information Canada, 1972. 236 p.

Computer data bank privacy controversy revisited: an analysis and an administrative proposal. Catholic University law review, v. 22, Spring, 1973: 628.

Hamilton, Peter. Computer security. Philadelphia, Auerbach Publ., 1973. 122 p.

IBM Corporation. Data Security and Data Processing: Study of Specific Aspects of Data Security. White Plains, N.Y., IBM Corporation, 1974. 1253 p.

Martin, James. Security, accuracy, and privacy in computer systems. Englewood Cliffs, N.J., Prentice-Hall Inc., [1973] 626 p.

Nolan, Richard L. Personal privacy versus the corporate computer. Harvard business review, v. 53, Mar.-Apr. 1975: 62-70.

Turn, Rein. Privacy and Security in Personal Information Data Bank systems. Santa Monica, the Rand Corporation, 1974. 104 p.

U.S. Congress. House. Committee on Government Operations. Federal information systems and plans, implications and issues. Hearings, 93d Congress, 2d session. Part 3. Washington, U.S. Govt. Print. Off., 1974. 1214 p. Hearings held Jan. 29, 31, and Feb. 5,1974.

———. ———. ———. Subcommittee on Foreign Operations and Government Information. Records maintained by government agencies. Washington, U.S. Govt. Print. Off., 1972. 92d Congress, 2d session 232 p.

U.S. Congress. Senate. Committee on Government Operations. Privacy and protection of personal information in Europe: privacy developments and their implications for United States policy: a staff report. Washington, U.S. Govt. Print. Off., 1975. 436 p. At head of title: 93d Cong., 2d sess. Committee print.

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Rights. Federal data banks and constitutional rights; a study of data systems on individuals maintained by agencies of the

United States Government. 93d Cong., 2d sess. Washington, U.S. Govt. Print. Off., 1974. 6 v. (3527 p.)

———. ———. ———. Subcommittee on Constitutional Rights. Federal data banks and constitutional rights: a study of data systems on individuals maintained by agencies of the United States Government. Washington, U.S. Govt. Print. Off., 1974. 53 p. At head of title: 93d Cong., 2d sess. Committee print.

———. ———. ———. Subcommittee on Constitutional Rights. Federal data banks, computers and the Bill of Rights. Hearings, 92d Cong., 1st sess. Washington, U.S. Govt. Print. Off., 1971. 1047-2164 p. Hearings held Feb. 23 . . . Mar. 17, 1971. Part II—relating to Departments of Army, Defense, and Justice.

U.S. Department of Health, Education, and Welfare. Secretary's Advisory Committee on Automated Personal Data Systems. Records, computers and the rights of citizens. Washington, U.S. Govt. Print. Off., 1973. 346 p.

Ware, Willis H. Data Banks, Privacy, and Society. Report No. 5131. Santa Monica, the Rand Corporation, 1973. 11 p.

Westin, Alan F. and Michael A. Baker. Project directors. Data banks in a free society. Computers, record-keeping and privacy. Report of the Project on Computer Data banks of the Computer Science and Engineering Board National Academy of Science. New York., N.Y. Quadrangle Books, 1972. 522 p.

Westin, Alan F. Information technology in a democracy. Cambridge. Harvard University Press, 1971. 499 pages.

Wheeler, Stanton, ed. On Record: files and dossiers in American life. New York, Russell Sage Foundation, 1969.

Younger, K., Chairman. Report of the Committee on Privacy. London, Her Majesty's Stationery Office, 1972. 350 pages.

IV. Credit Reports and Electronic Funds Transfer

Dunkelberg, William C. Credit use and users: the value of credit use. Journal of consumer credit management, v. 4, winter 1973: 66-80.

Ege, Stephen M. Electronic funds transfer: a survey of problems and prospects in 1975. Maryland law review, v. 35, no. 1, 1975: 3-56.

Foer, Albert A. The Personal Information Market: An Examination of the Scope and Impact of the Fair Credit Reporting Act. Loyola Law Students Consumer Journal, v. II, 1974: 37-138.

Hendrickson, Robert. The Cashless Society. New York, Dodd, Mead & Co, 1972.

Knight, Robert E. The changing payments mechanism: electronic funds transfer arrangements. Federal Reserve Bank of Kansas City monthly review, July-Aug. 1974: 10-20.

Little (Arthur D.) Inc. The consequences of electronic funds transfer; a technology assessment of movement toward a less cash/less check society. Washington, National Science Foundation, for sale by the Supt. of Docs., U.S. Govt. Print. Off., 1975. 351 p. "NSF/-RA/X-75-015"

McLauglin, Marsha Morrow. Vaupel, Suzanne. Constitutional right of privacy and investigative consumer reports: little brother is watching you. Hastings constitutional law quarterly, v. 2, summer 1975: 773-828.

U.S. Congress. House. Committee on Banking, Currency and Housing. Subcommittee on Consumer Affairs. The Fair Credit Billing Act amendments of 1975. Hearing, 94th Cong., 1st sess., on H.R. 10209. Oct. 23, 1975. Washington, U.S. Govt. Print. Off., 1975. 115 p.

U.S. Congress. Senate. Committee on Banking, Housing and Urban Affairs. Subcommittee on Consumer Credit. Credit Reporting Abuses. Hearings, 93d Congress, 2d session, on amending the Fair Credit Reporting Act. February 5, 1974. Washington: U.S. Government Printing Office, 1974. 54 p.

———. ———. ———. Subcommittee on Consumer Credit. Fair Credit Reporting Act of 1973. Hearings, 93d Congress, 1st session, on S. 2360. [Washington, U.S. Govt. Off., 1973] 993 p.

———. ———. ———. Subcommittee on Consumer Affairs. Fair Credit reporting amendments of 1975. Hearings, 94th Cong., 1st sess., on S. 1840. Washington, U.S. Govt. Print. Off., 1976. 987 p. Hearings held Oct. 22 . . . Nov. 18, 1975.

———. ———. ———. Subcommittee on Financial Institutions. Electronic Funds Transfer Moratorium Act of 1975. Hearing, 94th Cong., 1st sess., on S. 245. Mar. 14, 1975. Washington, U.S. Govt. Print. Off., 1975. 221 p.

Westermeier, John T., Jr. The Privacy Side of the Credit Card, American University Law Review, v. 23, Fall 1973: 183-207.

V. Criminal Justice Records

"Arrest Records—Protecting the Innocent Misuse of Arrest Records." *Tulane Law Review* 48 April, 1974: 629.

"Branded: Arrest Records of the Unconvicted." *Mississippi Law Journal* v. 44 November, 1973: 928.

Cohn, Sigmund A. "Criminal Records—a Comparative Approach." *Georgia Journal of International and Comparative Law*, v. 4 Winter, 1974: 116.

"Criminal Law—Expungement of Arrest Records." New York Law Forum, Summer, 1975: 85.

DeWeese, J. Taylor. "Reforming Our 'Record Prisons': a Proposal for the Federal Regulation of Crime Data Banks." Rutgers Camden Law Journal, v. 21 Summer, 1974: 26.

Hill, J. Graham. Texas Open Records Act: law enforcement agencies' investigatory records. Southwestern law journal, v. 29, spring 1975: 431-453.

Project SEARCH. Committee on Security and Privacy. *Security and Privacy Considerations in Criminal History Information Systems.* Technical Report No. 2, July, 1970. [Sacramento, California., California Crime Technological Research Foundation, 1970]. 55 p.

"Protection of Privacy of Computerized Records in the National Crime Information Center," *University of Michigan Journal of Law Reform*, v. 7, Spring, 1974: 594.

Rehnquist, William H. "Is an Expanded Right of Privacy Consistent with Fair and Effective Law Enforcement? Or, Privacy, You've Come a Long Way, Baby." *Kansas Law Review*, v. 23, Fall, 1974: 1.

SEARCH Group, Inc. *Standards for Security and Privacy of Criminal Justice Information.* Technical Report No. 13. [Sacramento, Calif., 1975]. 30 p.

U.S. Congress. House. *Security and Privacy of Criminal Arrest Records. Hearings* before Subcommittee No. 4 of the Committee on the Judiciary, House of Representatives, on H.R. 13315, 92nd Cong., 2d sess., 1972.

———. ———. Committee on Internal Security. Domestic Intelligence Operations for Internal Security Purposes, Part I. Hearings, 93d Congress, 2d session. Feb. 20, April 1, 2, 8, and June 4 and 5, 1974. Washington, U.S. Govt. Print. Off., 1974. 3913 p.

———. ———. Committee on the Judiciary. Subcommittee on Civil Rights and Constitutional Rights. Dissemination of Criminal Justice Information. Hearings, 93d Congress, 2d sess. on H.R. 138, H.R. 9783, H.R. 12574 and H.R. 12575. July 26, Aug. 2, Sept. 26, Oct. 11, 1973; Feb. 26, 28, Mar. 5, 28, and April 3, 1974. Washington, U.S. Govt. Print. Off., 1974. 586 p.

———. ———. ———. Subcommittee on Civil and Constitutional Rights. FBI oversight. Hearings, 94th Cong., 1st sess. Part I. Feb. 27, 1975. Washington, U.S. Govt. Print. Off., 1975. 48 p. "Serial no. 2"

U.S. Congress. Senate. *Criminal Justice Data Banks—1974.* Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, Senate, on S. 2542, S. 2810, S. 2963, and S. 2964, 93rd Cong., 2d sess., 1974. 2 vols.

———. ———. Committee on the Judiciary. Subcommittee on Constitutional Rights. Criminal Justice Information and Protection of Privacy Act of 1975. Hearings, 94th Cong., 1st sess., on S. 2008, S. 1427, and S. 1428. July 15-16, 1975. Washington, U.S. Govt. Print. Off., 1975. 311 p.

U.S. Dept. of Justice. Criminal justice information systems. Federal register, v. 40, May 20, 1975: 22113-22119.

U.S. General Accounting Office. *How Criminal Justice Agencies Use Criminal History Information; Report to the Senate Subcommittee on Constitutional Rights, Committee on the Judiciary, by the Comptroller General of the United States.* [Washington, 1974]. (B-171019 Aug. 19, 1974).

U.S. Law Enforcement Assistance Administration. Office of General Counsel. Compendium of state laws governing the privacy and security of criminal justice information. Washington, 1975. 1 v.

Walz, Kathleen. "Arrest Record Expungement in California: the Polishing of Sterling." *University of San Francisco Law Review* 299 (Fall, 1974).

VI. Financial Privacy

Association of the Bar of the City of New York. Committee on Civil Rights. The privacy of Federal income tax returns: committee report. Record of the Association of the Bar of the City of New York, v. 30, May-June 1975: 400-408.

Callaghan, Thomas A., Jr. The Comptroller of the Currency's disclosure regulation and a banker's right to privacy. Banking law journal, v. 92, Feb. 1975: 119-139.

Fighting conflicts of interest in officialdom: constitutional and practical guidelines for state financial disclosure laws. Michigan law review, v. 73, Mar. 1975: 758-781.

Government Access to Bank Records. Note. Yale Law Journal, v. 83, 1974: 1439-1474.

U.S. Congress. House. Committee on Banking, Currancy and Housing. Subcommittee on Financial Institutions Supervision, Regulation and Insurance. Bank failures, regulatory reform, financial privacy. Hearings, 94th Cong., 1st sess., on H.R. 8024. 3v. June 26, July 14, 15, 16, 17, and 21, 1975. Washington, U.S. Govt. Print. Off., 1975. 2234 p.

———. ———. Committee on Ways and Means. Subcommittee on Oversight. Proposals for administrative changes in Internal Revenue Service procedures. Hearings, 94th Cong., 1st sess. Washington, U.S. Govt. Print. Off., 1975. 434 p. Hearings held July 10 . . . Sept. 22, 1975.

U.S. Congress. Joint Committee on Internal Revenue Taxation. Confidentiality of tax returns. Washington, U.S. Govt. Print. Off., 1975. 44 p. At head of title: Committee print.

———. Investigation of the Special Service Staff of the Internal Revenue Service. Prepared for the Joint Committee on Internal Revenue Taxation. Washington, U.S. Govt. Print. Off., 1975. 114 p. At head of title: 94th Cong., 1st sess. Committee print.

U.S. Congress. Senate. Committee on Finance. Subcommittee on Administration of the Internal Revenue Code. Federal tax return privacy. Hearings, 94th Cong., 1st sess. Washington, U.S. Govt. Print. Off., 1975. 308 p. Hearings held Apr. 21 and 28, 1975.

———. ———. Committee on the Judiciary. Subcommittee on Administrative Practice and Procedure. IRS disclosure. Hearings, 93d Cong., 2d sess. Washington, U.S. Govt. Print. Off., 1974. 294 p. Hearings held Apr. 1 and July 31, 1974.

———. ———. Committee on the Judiciary. Subcommittee on Constitutional Rights. Political intelligence in the Internal Revenue Service: the Special Service Staff; a documentary analysis. Washington, U.S. Govt. Print. Off., 1974. 344 p.

VII. Public Officials

Gay, M. Lee, Jr. Privacy of information in Florida public employee personnel files. University of Florida law review, v. 27, winter 1975: 481-501.

Little Joseph W. and Tompkins, Thomas. Open government laws: an insiders view. North Carolina law review v. 53, Feb. 1975: 451-489.

U.S. Congress. House. Committee on Government Operations. The use of polygraphs and similar devices by Federal agencies; thirteenth report together with separate and dissenting views. Washington, U.S. Govt. Print. Off., 1976. 61 p. (94th Cong., 2d sess. House. Report no. 94-795)

———. ———. Committee on Government Operations. Foreign Operations and Government Information Subcommittee. The use of polygraphs and similar devices by Federal agencies. Hearings, 93d Cong., 2d sess. June 4 and 5, 1974. Washington, U.S. Govt. Print. Off., 1974. 790 p.

———. ———. Committee on Post Office and Civil Service. Subcommittee on Retirement and Employee Benefits. Rights to privacy of Federal employees. Hearings, 93d Cong., 1st and 2d sess., on H.R. 1281 and related bills. Washington, U.S. Govt. Print. Off., 1974. 378 p. Hearings held May 14, 1973 . . Aug. 8, 1974. "Serial no. 93-22"

U.S. Congress. Senate. Committee on the Judiciary. Sub-

committee on Constitutional Rights. Privacy, polygraphs, and employment; a study. Washington, U.S. Govt. Print. Off., 1974. 18 p. At head of title: 93d Cong., 2d sess. Committee print.

VIII. Government Surveillance

Association of the Bar of the City of New York. Committee on Federal Legislation. Judicial procedures for national security electronic surveillance. Record of the Association of the Bar of the City of New York, v. 29, Dec. 1974: 751-774.

Christie, George C. Government Surveillance and Individual Freedom: A Proposed Statutory Response to Laird v. Tatum and the Broader Problem of Government Surveillance of the Individual. New York University Law Review, v. 47, Nov. 1972: 871-902.

Donner, Frank. Electronic surveillance: the national security game. Civil liberties review, v. 2, no. 3, 1975: 15-47.

Ehlke, Richard. Political Surveillance and Police Intelligence Gathering—Rights, Wrongs, and Remedies. Wisconsin Law Review, 1972: 175-199.

Ervin, Sam J., Jr. Privacy and government investigations. University of Illinois law forum, v. 1971, 1971: 137-153.

U.S. Congress. House. Committee on Government Operations. Subcommittee on Government Information and Individual Rights. Telephone monitoring practices by Federal agencies. Hearings, 93d Congress, 2d session. June 11 and 13, 1974. Washington, U.S. Govt. Print. Off., 1974. 293 p.

———. ———. Committee on the Judiciary. Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance; report to accompany H.R. 15173. Washington, U.S. Govt. Print. Off., 1974. 5 p. 93d Cong., 2d sess. House. Report no. 93-1343.

———. ———. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Wiretapping and electronic surveillance. Hearings, 93d Cong., 2d sess., on H.R. 1597, H.R. 7773, H.R. 9781, H.R. 9815, H.R. 9973, H.R. 10008, H.R. 10331, H.R. 11629, H.R. 11836, and H.R. 13825. Apr. 24, 26, and 29, 1974. Washington, U.S. Govt. Print. Off., 1974. 275 p. "Serial no. 41"

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Rights. Criminal justice data banks—1974. Hearings, 93d Congress, 2d session, on S. 2542, S. 2810, S. 2963, S. 2964. Mar. 5, 6, 7, 12, 13, [and] 14. Washington, U.S. Govt. Print. Off., 1971. 733 p.

———. Federal data banks, computers, and the Bill of Rights. Hearings, 92d Congress, 1st session on S. 969, S. 975, S. 1550, S. 2546. Washington, U.S. Govt. Print. Off., 1971. 2164 p. Hearings held Feb. 23-25, Mar. 2, 3, 4, 9, 11, 15 [and] 17, 1971.

———. Military surveillance. Hearings, 93d Congress, 2d session, on S. 2318. Apr. 9, 10, 1974. Washington, U.S. Govt. Print. Off., 1974. 397 p.

U.S. Congress. Senate Committee on the Judiciary. Subcommittee on Criminal Laws and Procedures. Electronic surveillance for national security purposes. Hearings, 93d Congress., 2d sess., on S. 2820, S. 3440, and S. 4062. Oct. 1, 2, and 3, 1974. Washington, U.S. Govt. Print. off., 1975. 577 p.

IX. Emerging Areas of Record Privacy

Beytagh, Francis X. Privacy and a free press: a contemporary conflict in values. New York law forum, v. 20, Winter 1975: 453-514.

Hirsch, Phil. The World's Biggest Data Bank. Datamation, v. 16, May 1970: 66-73.

Kaiser, Barbara L. Patients' Rights of Access to their Own Medical Records: The Need for New Law, Winter 1975: 317-330.

Kauffman, Miles P. Welfare and the right to privacy; applicants' rights. Res ipsa loquitur, v. 25, fall 1972: 107-113.

McNamara, Robert M., Jr. and Joyce R. Starr. Confidentiality of Narcotic Addict Treatment Records. Columbia Law Review, v. 73, Dec. 1973: 1579-1612.

Mattessich, Carole Marie. The Buckley Amendment: Opening School Files for Student and Parental Review, Catholic University Law Review, v. 24, Spring 1975: 588-603.

Mironi, Mordechai. The Confidentiality of Personnel Records: A Legal and Ethical View, Labor Law Journal, v. 25, May, 1974: 270-292.

Steinberg, Joseph. Some Aspects of Statistical Data Linkage for Individuals. In Data Bases, Computers, and the Social Sciences. New York, John Wiley and Sons, Intersciences Division, 1970. p. 238-251.

Stern, Laurence C. Medical Information Bureau: The Life Insurer's Data bank, v. 4, Rutgers Journal of Computers and the Law, v. 4, 1974: 1-41.

U.S. Congress. House. Committee on Government Operations. Foreign Operations and Government Information Subcommittee. Sale or distribution of mailing lists by Federal agencies. Hearings, 92d Cong., 2d sess., on H.R. 8903 and related bills. Jan. 13 and 15, 1972. 362 p.

———. ———. Committee on Post Office and Civil Service. Census confidentiality/mid-decade sample survey bill; report to accompany H.R. 14153. Washington, U.S. Govt. Print. Off., 1971. 27 p. 92d Congress, 2d session. House. Report no. 92-1288).

U.S. Congress. Joint Economic Committee. Subcommittee on Economic Statistics. The coordination and integration of government statistical programs. Hearings, 90th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1967. 206 p. Hearings held May 17, 18; June 7, 8, 1967.

U.S. Dept. of Health, Education, and Welfare. Office of the Secretary. Privacy rights of parents and students. Federal register, v. 40, Jan. 6, 1975: 1207-1216.

U.S. Office of Science and Technology. Privacy and Behavioral Research. Washington, U.S. Govt. Print. Off., 1967.

U.S. President's Commission on Federal Statistics. Federal Statistics. 2 vols. Washington, D. C.: U.S. Government Printing Office, 1971.